IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.85 of 2007
In
Notice of Motion No. of 2006
In
Suit No.111 of 2007

Violet Andrade. .. .. Appellant.
(Org.Plaintiff)

Vs.

Mary alias Kamala William D'Souza
and Others. .. .. Respondents
(Org.Defendants)

--

Shri S.U.Kamdar i/b M/s.Haresh Mehta & Co. for the Appellant.

S/Shri A.K.Abhyankar, Senior Counsel, with R.D.Suryawanshi for Respondent No.1.

Shri Chirag Balsara i/b K.Ashar & Co. for Respondent Nos.2 to 5.

--

CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 23RD MARCH, 2007

P.C.

1. On oral motion made by the learned advocate for the appellant, leave to delete the Respondent Nos.6 and 7. Amendment to be carried out forthwith.

2. Heard. Admit. Shri Abhyankar, the learned

counsel waives service for Respondent No.1, and Shri Balsara, the learned advocate waives service for Respondent Nos.2 to 5.

3. By consent, heard forthwith.

4. The appeal arises from the order dated 27th November, 2006 passed in Notice of Motion (Lodging) which was taken out in a Suit Lodging No.3207 of 2006 for interim relief in the matter, whereby the said motion has been disposed of on two grounds viz. that the flat in question is recorded in the name of Mr.William D'Souza and secondly that the plaintiff/appellant being a step daughter of the said William D'Souza is not entitled to claim right to the suit flat. Plain reading of the plaint apparently discloses various averments which, unless disputed, would prima facie disclose that the appellant/plaintiff's right, if any, to the property in question would be through her natural mother who has claimed to have purchased the flat along with the said William D'Souza. In view of the fact that the plaint apparently discloses that the flat was purchased by the mother of the plaintiff and the latter being a natural daughter of the former and there being specific assertion in the plaint that both

the parents have expired, the same prima facie discloses her right to the suit flat. Plain reading of the impugned order discloses that the Learned Single Judge has not considered this aspect while disposing the notice of motion.

5. In the background of the above facts, it was necessary for the Learned Single Judge to give an opportunity to the parties to putforth their contentions and also consider prima facie the right of the defendant/respondent in the matter before disposing the notice of motion. The claim by the plaintiff/appellant relates to the immovable property based on the document in the form of agreement for purchase of the property. It was necessary for the Learned Single Judge to consider the said document along with the various other pleadings and materials placed on record and only then an appropriate decision could have been taken on the contentions raised by the parties and as regards the prayer for grant of temporary injunction. Having not done so, the impugned order cannot be sustained and is liable to be quashed and set aside and the matter to be remanded to the Learned Single Judge to deal with the notice of motion in accordance with the provisions of law, after giving an opportunity to the parties to putforth their

rival contentions in the matter. Needless to say that we have not expressed any opinion on any of the points sought to be raised in the matter and the observations made herein are only for the purpose of ascertaining whether the learned Single Judge was justified in disposing of the notice of motion without giving opportunity to the parties to putforth their rival contentions as well as to place on record materials in support thereof.

6. We however do not find any irregularity committed by the Learned Single Judge in refusing to grant ad-interim relief, as, merely on the averments made in the plaint, there was no justification for grant of ad-interim relief.

7. With the above observations, the appeal is allowed. The impugned order is quashed and set aside and the matter is remanded to the Learned Single Judge for disposal of the notice of motion after hearing the parties and in accordance with the provisions of law.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)